

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>WILLIAM L. ANDERSON,</b>	)	<b>CASE NO. 5:09 CV 671</b>
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
<b>WARDEN BRADSHAW,</b>	)	<b>Magistrate Judge James S. Gallas</b>
	)	
<b>Respondent.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
		<b><u>AND ORDER</u></b>

This matter is before the Court on the Interim Report and Recommendation issued by Magistrate Judge James S. Gallas (Docket #12), recommending that the Petitioner's Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(5) (Docket #10) be denied.

**Procedural History**

Petitioner's Petition for Writ of Habeas Corpus was originally filed on March 25, 2009, pursuant to 28 U.S.C. § 2254. (Docket #1.) On April 7, 2009, the case was dismissed without prejudice, pending exhaustion of Petitioner's State court remedies. (Docket #4.) On July 10, 2009, Petitioner filed a Motion to Reopen (Docket #5) which was granted on August 10, 2009. The case was referred to Magistrate Judge Perelman, who had initially been randomly assigned to the case pursuant to Local Rule 3.1. (Docket #6.) On August 25, 2009, this Court withdrew the reference of the case to Magistrate Judge Perelman. (Docket #9.) The case was then

randomly reassigned to Magistrate Judge James S. Gallas pursuant to Local Rule 3.1.

On September 1, 2009, Petitioner filed his Motion for Relief from Judgment, arguing that the Court was without authority to withdraw the initial reference to Magistrate Judge Perelman. (Docket #10.) The Motion for Relief from Judgment was referred to Magistrate Judge Gallas for a Report and Recommendation. (Docket #11.)

On September 4, 2009, Magistrate Judge Gallas issued an Interim Report and Recommendation, recommending that Petitioner's Motion be denied, and that reference to Magistrate Judge Gallas be continued for proceedings up to and including report and recommendation as to Petitioner's Petition for Writ of Habeas Corpus. (Docket #12.) The Magistrate Judge thoroughly examined the Court's authority to withdraw the reference of a matter to the Magistrate Judge and notes that the subsequent assignment of Magistrate Judge Gallas to this matter, as one of the seven other Magistrate Judges, was at random, and that Petitioner has not demonstrated that the reassignment was for an impermissible reason or constituted an abuse of discretion.

No objections were filed to the Interim Report and Recommendation.

#### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

### **Conclusion**

This Court has carefully reviewed the Magistrate Judge's Report and Recommendation. The Magistrate Judge recommends that the Motion for Relief from Judgment filed by Petitioner (Docket #10) be denied on the basis that it is within the Court's power to withdraw the reference of a matter to a Magistrate Judge. The Magistrate Judge thoroughly and exhaustively examined the issue raised by Petitioner in his Motion. There is no basis upon which to find that the Court's withdrawal of the initial reference to Magistrate Judge Perelman, and the subsequent random assignment of the case to Magistrate Judge Gallas, was unlawful. Accordingly, the Court hereby agrees with and adopts the findings of the Magistrate Judge as its own.

The Interim Report and Recommendation issued by Magistrate Judge Gallas (Document

# 12) is hereby ADOPTED. Petitioner's Motion for Relief from Judgment filed pursuant to Fed. R. Civ. P. 60(b)(5) is hereby DENIED. This case remains referred to Magistrate Judge Gallas for proceedings up to and including a report and recommendation as to Petitioner's Petition for Writ of Habeas Corpus.

IT IS SO ORDERED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: October 8, 2009